

IN THE CIRCUIT COURT OF KANAWHA COUNTY, WEST VIRGINIA

STATE OF WEST VIRGINIA, ex rel.
PATRICK MORRISEY,
ATTORNEY GENERAL,

Petitioner.

vs.

MISC. ACTION NO. 20-C-1089

Judge Bailey

KEVIN KYLE d/b/a
KYLE CONSTRUCTION,

Respondent.

PETITION TO ENFORCE
ASSURANCE OF DISCONTINUANCE

Comes now the Petitioner, State of West Virginia ex rel. Patrick Morrissey, Attorney General ("the State" or "Attorney General") and files this Petition to Enforce Assurance of Discontinuance ("Petition") asking this court to enter a judgment against Respondent Kevin Kyle, for violating the Assurance of Discontinuance entered into with the Attorney General in June 2016. In support of this Petition, the Attorney General represents as follows:

1. Kevin Kyle is a resident of Kanawha County, with an address of 318 Rockwood Avenue, Belle, West Virginia.
2. Kevin Kyle is the owner and sole proprietor of Kyle Construction located at 318 Rockwood Avenue, Belle, Kanawha County, West Virginia.

3. Kevin Kyle d/b/a Kyle Construction engages in the business of contracting as defined by the West Virginia Contractor's Licensing Act, W. Va. Code § 21-11-3 and the West Virginia Contractor Licensing Board's Legislative Rule, 28 C.S.R. § 2-3.9.

4. Kevin Kyle engages in business in the State of West Virginia and, therefore, his business practices are subject to the provisions set forth in the West Virginia Consumer Credit and Protection Act, ("WVCCPA"), W. Va. Code §§ 46A-1-101, *et seq.*

5. Kevin Kyle's transactions constitute "home improvement" transactions, and are subject to the Attorney General's Legislative Rule Governing Prevention of Unfair or Deceptive Acts or Practices in Home Improvement and Home Construction Transactions ("Home Improvement Rule"), W. Va. Code R. 142-5-1, enforced by the Attorney General under W. Va. Code §§ 46A-7-101, *et seq.*

6. A person or creditor that engages in repeated and willful violations of the Act is subject to a civil penalty of no more than \$5,000.00 for each violation in accordance with W. Va. Code § 46A-7-111(2).

7. The Attorney General opened an investigation of Kevin Kyle d/b/a Kyle Construction after receiving complaints and other information disclosing that Kevin Kyle was not licensed as a contractor, was not providing proper notices in his contracts, and was not complying with applicable West Virginia laws.

8. Upon completion of the investigation, the Attorney General entered into a formal settlement agreement, called an Assurance of Discontinuance ("Assurance"), with Kevin Kyle on June 14, 2016, a copy of which is attached hereto as Exhibit A and incorporated by reference herein.

9. In the Assurance, Kevin Kyle promised to comply with the WVCCPA, the Home Improvement Rule, and all other applicable laws in its future business practices.

10. Specifically, Kevin Kyle promised that he would:

a) provide consumers with a notice of the Buyer's Right to Cancel in compliance with 16 C.F.R. § 429.1 and W. Va. Code § 46a-2-133;

b) include in his contracts with consumers his contracting license number and an approximate completion date of the contract in compliance with W. Va. Code § 21-11-6(b), 142 C.S.R. § 5-3.1.2, and 142 C.S.R. § 5-3.1.24; and

c) properly perform construction contracts in compliance with the Home Improvement Rule, 142 C.S.R. § 5-3.1.8.

11. Under the terms of the Assurance, Kevin Kyle was also obligated to pay refunds to two West Virginia consumers and a civil penalty in the amount of \$2,000.00 to the State of West Virginia.

12. The Assurance was signed by Respondent Kevin Kyle.

13. Although Kevin Kyle paid the refunds due to the two consumers, he made no payments toward the civil penalty of \$2,000.00.

14. On November 16, 2017, the Attorney General's Office filed a Petition to Enforce the Assurance of Discontinuance due to Kevin Kyle's failure to pay the civil penalty as required.

15. Thereafter, Kevin Kyle entered into a payment-over-time agreement with the Attorney General's office to pay the civil penalty.

16. Kevin Kyle paid the civil penalty in full.

17. That Enforcement Proceeding was dismissed on February 19, 2020.
18. On January 9, 2019, the Attorney General's Office received a consumer complaint from Zachary Ballard of Cedar Grove, West Virginia alleging that Kevin Kyle failed to perform roof replacement work in a workmanlike manner.
19. Specifically, Mr. Ballard alleged that he entered into a written contract with Kevin Kyle to install a new metal roof on August 22, 2018 for a total price of \$8,900.00, which was paid in full. The written agreement is attached hereto as Exhibit B and fully incorporated herein.
20. The written contract with Mr. Ballard does not contain Kevin Kyle's contracting license number or an approximate completion date in violation of W. Va. Code § 21-11-6(b), 142 C.S.R. § 5-3.1.2, and 142 C.S.R. § 5-3.1.24.
21. The written contract with Mr. Ballard does not provide any notice of the Buyer's Right to Cancel in violation of 16 C.F.R. § 429.1 and W. Va. Code § 46a-2-133.
22. Three days after completion of the work, Mr. Ballard noticed water leaking through the ceiling. Upon further inspection, Mr. Ballard learned that no underlayment had been put down when the roof was installed, contrary to the terms of the written agreement.
23. Mr. Ballard contacted Kevin Kyle about the leaks. Mr. Kyle promised to return to correct the substandard workmanship. However, Mr. Kyle never returned to make the repair. The roof continued to leak which led to Ballard filing a complaint with the Attorney General.

24. On May 1, 2019, during a telephone call with the Attorney General's Office, Kevin Kyle acknowledged that he failed to put down underlayment pursuant to his written agreement with Ballard.

25. During an in-person meeting at the Attorney General's Office on July 19, 2019, Kevin Kyle reviewed video and photographic evidence of the leaking roof and acknowledged that the contract was not performed in a workmanlike manner in violation of the Home Improvement Rule, 142 C.S.R. § 5-3.1.8, and of the Assurance. *See Exhibit A*, discussed *supra*.

26. On July 19, 2019, Kevin Kyle agreed to refund \$4,500.00 to Mr. Ballard to resolve the consumer complaint by making payments of \$500.00 per month for nine months, by the 5th day of each month, beginning in September 2019 and continuing until the refund is paid in full.

27. Kevin Kyle made two payments of \$500.00 to Ballard. The first payment was received on September 13, 2019. The second payment was received on October 30, 2019. No other payment have been made toward the remaining balance of \$3,500.00.

28. By letters dated November 20, 2019, and April 17, 2020, the Attorney General advised Kevin Kyle that he had defaulted on his obligations under the Assurance and under his agreement to refund money to Zachary Ballard and demanded that Mr. Kyle pay the remaining amount he owes to Mr. Ballard. The Attorney General's Office has received no response.

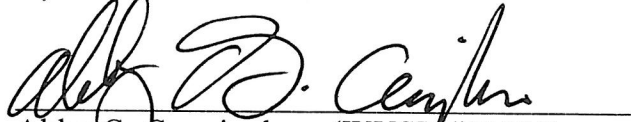
29. Respondent has failed to comply with the terms of the agreement and has defaulted on his obligations under the Assurance.

WHEREFORE, the State prays that it be granted a judgment against Kevin Kyle in the amount of \$3,500.00, plus pre- and post-judgment interest; and the State be awarded its costs, including reimbursement for its reasonable attorneys' fees, and such other equitable relief as is proper and just.

Respectfully submitted,

**STATE OF WEST VIRGINIA ex rel.
PATRICK MORRISEY,
ATTORNEY GENERAL, Petitioner**

By Counsel

A handwritten signature in black ink, appearing to read 'Abby G. Cunningham', is written over a horizontal line.

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